



"People
helping people
help
themselves"

Michael R. Pence, Governor
State of Indiana

Indiana Family and Social Services Administration

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Policy Title: FSSA Utilization of Independent Contractors or Leased/Contingent Employees

Effective Date: September 1, 2013

Policy Purpose: In an effort to ensure FSSA's compliance with federal tax law, and to protect and preserve key Agency intelligence, skills, and expertise within the Agency, the following procedures must be adhered to by all divisions and functions before procuring personal services from any individual or entity that is not an employee of the State of Indiana.

INDEPENDENT CONTRACTORS

Pursuant to the guidelines from the Indiana Department of Administration Contract Guide, it is the responsibility of each agency to ensure all contractors and employees are appropriately classified. Personal Service contracts which create or appear to create an employment relationship under IRS guidelines cause grave tax consequences to the State and potential inequities to the individuals providing services. The contract guidelines recommend an agency analyze in writing the service sought in relation to the IRS factors.

To determine whether the individual providing service is an employee or an independent contractor, the IRS considers the degree of control and independence within three (3) categories. They are:

1. Behavioral - Does the employer have the right to direct or control how the worker does the work?
 - *Types of Instructions Given* - An employee is generally subject to instructions about when, where, and how to work.
 - *Degree of Instruction* - More detailed instructions indicate the worker is an employee, while less detailed instructions reflect less control.
 - *Evaluation Systems* - The details of how the work is performed as well as the outcome would be measured for an employee, while the end result only is measured for an independent contractor.
 - *Training* - Periodic or on-going training on procedures and methods of how to do the job is strong evidence of an employer-employee relationship.

2. Financial Control - Does the business have the right to control the economic aspects of the worker's job?

- *Significant Investment* - An independent contractor may have a significant investment in the equipment used when working for someone else.
- *Unreimbursed Expenses* - Independent contractors are more likely to have unreimbursed expenses and fixed ongoing costs that are incurred regardless of whether work is currently being performed.
- *Opportunity for Profit or Loss* - The possibility of incurring a loss (i.e. their significant investments and unreimbursed expenses exceed their income from the work) indicates that the worker is an independent contractor.
- *Services Available to the Market* - Independent contractors are generally free to seek out other business opportunities, often by advertising, maintaining a visible business location, and being available to work in the relevant market.
- *Method of Payment* - An employee is generally guaranteed a regular wage amount for an hourly, weekly, or other period of time while an independent contractor is often paid by a flat fee for the job. It is common in some professions however to pay an independent contractor hourly.\

3. Type of Relationship

- *Written Contracts* - Although a contract may state that a worker is an independent contractor, it is not sufficient to determine the worker's status. How the parties work together (as defined by these factors) determines whether the worker is an employee or an independent contractor.
- *Employee Benefits* - Employee benefits such as insurance, pension plans, leave time, and disability insurance are generally not granted to independent contractors, however, the lack of these benefits does not necessarily mean the worker is an independent contractor.
- *Permanency of the Relationship* - An employee is generally hired with the expectation that the relationship will continue indefinitely while an independent contractor is typically hired for a specific project or period of time.
- *Services Provided as Core Activity of the Business* - If a worker provides services that are a core aspect of the agency, it is more likely that the agency will have the right to direct and control the workers activities, indicating that there is an employer-employee relationship.

For more detailed information, the IRS's most recent independent contractor test is located at:

<http://www.irs.gov/pub/irs-pdf/p15a.pdf>

Required Procedures: When considering the procurement of an individual's services, the following actions should be taken:

- Determine whether an individual being sought to perform a service should be an employee or an independent contractor. The attached form based on an *IRS 20 Factor Test on Employment Status* should be completed. The form should be reviewed and approved by the Division Director/Functional Director.

- Should the results of the *20 Factor Test* indicate that the individual being sought to perform a service **should be an employee**, attempts to procure an independent contractor should cease. The division should work with Human Resources through the normal hiring processes.
- Should the results of the *20 Factor Test* clearly indicate that the individual being sought to perform a service **could be an independent contractor**, the division should then submit the completed form to the Director of Strategic Initiatives for authorization. Once authorized, the division may continue to work through the normal Request for Services processes. A copy of the *20 Factor Test* should be retained with the agency procurement requisition associated with the contract.
- Should the results of the 20 Factor Test be unclear as to whether the individual being sought to perform a service should be an employee or an independent contractor, the division should seek the assistance of Human Resources or the Director of Strategic Initiatives for guidance before proceeding.

The authorization of the Director of Strategic Initiatives must be obtained before any contractor is retained.

LEASED/CONTINGENT EMPLOYEES

When considering an arrangement for securing the services of an individual or group of individuals on a temporary basis through the State Quantity Purchase Agreement (QPA) for Managed Service Provider (MSP) services, the requesting manager and division are responsible for insuring that the utilization of leased/contingent employees meets the following criteria:

- The leased/contingent employee fulfills a **short-term or temporary need** such as:
 - Providing coverage of work performed normally by an employee due to an anticipated or unanticipated:
 1. employee temporary leave of absence
 2. employee departure
 - Providing special services not normally performed by an employee on an occasional basis
 - Providing specific services associated with a special project that has an anticipated conclusion
- The total hours of work performed by a leased/contingent employee **does not exceed 1,000 hours per year**

- The total hours of work performing one specific duty or service by more than one leased/contingent employee **does not exceed 1,000 hours per year**

Required Procedures: When considering the services of an individual or group of individuals on a temporary basis through online job posting processes associated the State Quantity Purchase Agreement (QPA) for Managed Service Provider (MSP) services, the following actions should be taken:

- Determine whether the work to be performed is a short-term need as identified above.
- Obtain authorization to obtain temporary services through the (MSP) from the Director of Strategic Initiatives via e-mail. The following information should be included in the request:
 - ✓ Name of the Division and Department
 - ✓ Name of the program or project
 - ✓ Description of the services to be performed
 - ✓ Reason for the need for temporary services, including reference to the position number being covered, if applicable
 - ✓ Anticipated length of service
 - ✓ The maximum total hours to be worked
- Once authorization for temporary services has been received, the division may proceed with the established processes associated with the request, selection, and procurement of the temporary services.
 1. Submit a completed Posting Request Questionnaire to the Managed Service Provider for Admin-Clerical, IT, or the Selected Resource Program (SRP).
 2. Select a candidate
 3. Submit a requisition to establish a Purchase Order through the normal processes associated with procuring goods and/or services. On line 1 of the requisition:
 - ✓ Attach a copy of the Managed Service Provider request and authorization e-mail
 - ✓ Include the following information in the text
 - Job Title and Job Code
 - Resource Name
 - Hourly Rate
 - Term of assignment (dates, total hours, 7.5 or ? hours per day, and no holidays)
 - Hiring Manager name
 - Timesheet Approver name

4. Upon receipt of the approved Purchase Order, finalize arrangements with Managed Service Provider to on-board the selected candidate. **NO CANDIDATE SHOULD BE ON-BOARDED UNTIL A PURCHASE ORDER HAS BEEN ESTABLISHED.**
- Once temporary services have been procured, it is the responsibility of the division to:
 - Maintain record of the total hours worked by the leased employee or employees with copies of the timesheets approved to ensure that the hours associated with the services provided do not exceed 1,000 per year.
 - Prepare and submit to the Director of Strategic Initiatives on a quarterly basis, a report recording the total hours worked in that quarter as well as the calendar year-to-date total hours worked by each leased employee within the division.